

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RICHARD LOOS,

*Plaintiff,*

**Case Number: 07-CV-6723 (PKL)**

*-against-*

COMFORT INNS, INC. and CHOICE HOTELS  
INTERNATIONAL, INC.,

*Defendants,*

**VERIFIED ANSWER TO  
THIRD-PARTY COMPLAINT**

-----X  
COMFORT INNS, INC. and CHOICE HOTELS  
INTERNATIONAL, INC.,

Assigned Judge:  
Hon. Peter K. Leisure

*Third-Party Plaintiffs,*

*-against-*

KENNETH WEISS and RONDAVEL MANAGEMENT  
CORPORATION

*Third-Party Defendants.*

-----X  
The Third-Party defendant, RONDAVEL MANAGEMENT CORPORATION, by and through their attorneys, LAW OFFICES OF DONALD L. FRUM hereby answers the Third-Party Complaint as follows:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "1," "2," "3," "4," "5," "6," and "7" of the complaint.

**AS AND FOR THE FIRST CAUSE OF ACTION**

2. The Defendants, answering paragraph numbered "8" repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "7" inclusive as if set forth at length herein.

3. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "9," "10," and "11" of the complaint.

**AS AND FOR SECOND CAUSE OF ACTION**

4. The Defendants, answering paragraph numbered "12" repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "11 inclusive as if set forth at length herein.

5. Denies the allegations contained in paragraph numbered "13," "14," and "15" of the complaint.

**AS AND FOR A CROSS-CLAIM AGAINST THE  
CO-THIRD-DEFENDANT KENNETH WEISS**

6. It is respectfully alleged that if the plaintiffs were caused to sustain damages at the time and place set forth in the plaintiffs' complaint through any carelessness, recklessness and/or negligence other than the plaintiffs' own negligence, carelessness and recklessness, said damages were sustained by reason of the primary carelessness, reckless and negligence and/or affirmative acts of omission and commission, of the CO-DEFENDANT, KENNETH WEISS, individually and/or his agents, servants and/or employees, with the negligence, if any, on the part of this answering defendants being secondary and/or derivative only.

That by reason of the foregoing, the CO-DEFENDANT, KENNETH WEISS, will be liable to the answering defendants in the event and in the amount of recovery herein by the plaintiff, or in such amount as the Court of Jury may direct.

**AS AND FOR A COUNTER-CLAIM  
AGAINST THE PLAINTIFF, RICHARD LOOS**

7. It is respectfully alleged that if the plaintiff was caused to sustain damages at the time and place set forth in the plaintiffs' complaint through any carelessness, recklessness and/or negligence other than the plaintiffs' own negligence, carelessness and recklessness, said damages were sustained by reason of the primary carelessness, reckless and negligence and/or affirmative acts of omission and commission, of the Plaintiff, RICHARD LOOS, individually and/or his agents, servants and/or employees, with the negligence, if any, on the part of this answering defendant, RONDAVEL MANAGEMENT CORPORATION being secondary and/or derivative only.

That by reason of the foregoing, the Plaintiff, RICHARD LOOS, will be liable to the answering defendants, in the event and in the amount of recovery herein by the plaintiffs, or in such amount as the Court of Jury may direct.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

8. The Court lacks personal jurisdiction over the answering defendants.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

9. That each cause of action is barred by the Statute of Limitations in that said action was not commenced within the applicable statute of limitations period.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

10. Pursuant to CPLR 4545 (c), any award to the Plaintiff for economic loss shall be reduced by the amount of economic recovery received from collateral sources.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

11. The accident or occurrence complained of was caused in whole or in part by the culpable conduct attributed to the Plaintiff including contributory negligence and/or assumption of the risk and that by reason thereof the amount of damages recoverable, if any, shall be diminished in whole or in part by that portion of which the culpable conduct attributed to the Plaintiff bears to the alleged conduct of the defendants which allegedly caused the damages.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

12. That the allegations set forth in the complaint fail to state a cause of action against the answering defendants.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

13. Plaintiff failed to take all necessary and proper steps available to mitigate its damages.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

14. The limited liability provisions of Article 16 of the CPLR are applicable.

WHEREFORE, the defendants, RONDAVEL MANAGEMENT CORPORATION & PALISDALES LODGING CORPORATION, demand judgment dismissing the complaint of the plaintiff herein granting judgment over and against the co-defendant on the cross-claim, together with costs and disbursement of this action and for such other and further relief as to this Court may deem just and proper.

Dated: Elmsford, NY  
March 3, 2008

Yours, etc.,

LAW OFFICES OF DONALD L. FRUM

By: 

Paul S. Zilberfein Esq. (7462)

*Attorneys for Third-Party Defendant*

RONDAVEL MANAGEMENT CORPORATION

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**ATTORNEY'S VERIFICATION**

Paul S. Zilberfein, Esq., an attorney duly admitted to practice in the courts of New York State, hereby affirms under penalty of perjury and pursuant to CPLR § 2106 as follows:

Affirmant is associated with the LAW OFFICES OF DONALD L. FRUM, the attorneys of record for the defendants, RONDAVEL MANAGEMENT CORPORATION in the within action and as such is fully familiar with the facts and circumstances heretofore had herein by virtue of the file maintained by this office.

Affirmant has read the foregoing **VERIFIED ANSWER** and the same is true to affirmant's own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters affirmant believes them to be true.

This verification is made by an attorney because the defendants, RONDAVEL MANAGEMENT CORPORATION is not in the same County where your affirmant's office is located.

Dated: Elmsford, NY  
March 3, 2008



Paul S. Zilberfein, Esq. (7462)